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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

Craig T. Tekse,
Petitioner

v.

3M Company
Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Craig T. Tekse
pro se
3735 Orchard Avenue North
Minneapolis, Minnesota, 55422
(763) 588-3086

Questions For Review

Question 1.
When an employer makes a change to its retirement policy, does the employer have an equitable duty to make the change in a way that will not place some employees in the position of having to make a choice between either ending their employment before the change goes into effect or incurring a substantial reduction in their retirement benefits as a result of the change?

Question 2.
Was ERISA law intended to enable an employer to use the pre-emption and statute of limitations provisions of ERISA to remove a retirement related complaint that was timely filed in state court to federal court, and then move to dismiss the case because the case is time-barred due to the fact that the statute of limitations under ERISA in federal court is less than the statute of limitations for the complaint in state court?

Question 3.
In view of the fact that the alleged wrong doing by the employer in this case inherently created a situation where the employee was inhibited from pursuing a lawsuit against the employer for a period of nearly five years, can the ERISA statute of limitations be waived or extended, thereby enabling federal court to squarely address the real issue of this case, which is stated in question 1?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW.....	i
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF CASE.....	2
A. Background.....	2
B. Reason for delay in action.....	3
C. Employee's constructive fraud complaint.....	4
D. Employer's ERISA defense.....	5
REASON FOR ALLOWANCE OF WRIT.....	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

Page

28 U. S. C. sec. 1254 (1)..... 1

U. S. C. CONST. Article III sec 2..... 1

Minn. Stat. 541.05 Note 214..... 5

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix page 1a and is unpublished.

The opinion of the United States District Court appears at Appendix page 3a and is unpublished.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit's final judgment entered on January 23, 2006.

A timely petition for rehearing en banc was denied on March 3, 2006 (Appendix page 6a).

This court has jurisdiction to review the judgment under U.S.C sec. 1254 (1).

CONSTITIONAL AND STATUATORY PROVISIONS INVOLVED

This case involves use of equity by the court as authorized by Article Three of the United States Constitution: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this constitution...." U.S. Const. Article III sec. 2.

STATEMENT OF CASE

A. Background:

In 1992, the 3M Company (3M) started a program called 'pre-retirement leave' (PRL). 3M described PRL as an employee benefit which enabled older employees to end their active employment up to 5 years before actually retiring. Employees who went onto PRL were considered to be inactive employees. They received no pay but did receive some insurance benefits and continued to accrue service credit toward retirement for the time they were on PRL. They also agreed to retire within the 5 year period. PRL was a good program for both 3M, which needed to reduce its workforce and for those older employees who wanted to end their active employment sooner than allowed by 3M's regular retirement policy. However, a major problem arose for some employees because of the way 3M ended the PRL program, and the plaintiff in this case, Mr. Tekse, was one of those employees.

When 3M initiated the PRL program in spring of 1992, it was scheduled to end at the end of 1993. However, before its scheduled end date was reached, it was extended to the end of 1996, and then it was extended again to the end of 1997. In early December, 1997, 3M announced that the PRL program would definitely be ended. Eligible employees had until the end of the month to decide whether or not to go onto PRL. For Mr. Tekse, this created a very difficult choice. He had just reached the age where it would be feasible for him to go onto PRL, and he felt that he would like to go onto PRL eventually, but not that soon. If he chose to go onto PRL before it ended, his career would come to a sudden and premature end; if he chose to not go onto PRL at that time, PRL would no longer be available and the value of his retirement package would drop drastically and would not come back up for another 59

months at which he could actually retire. Essentially, the choice boiled down to either going onto PRL before it ended, thereby ending his active employment immediately, or continuing to work another 59 months. Both of these choices were undesirable to Mr. Tekse. This situation is shown graphically at Appendix page 7a (App 7a), which is a graph that Mr. Tekse made to help him visualize the choice he had to make. After 3 very stressful weeks of thinking about the choice, Mr. Tekse decided that going onto PRL at that time was the better of the two undesirable choices, and his active employment thereby came to a sudden and premature end at age 52.

During the time that the PRL program was available. many employees had voluntarily gone onto PRL in connection with various workforce reduction programs that 3M offered to various departments. These employees had been offered separation pay in exchange for ending their active employment early. Therefore, Mr. Tekse felt that he should also receive separation pay, since he was also ending his employment early by going onto PRL sooner than he wanted to. However, when he asked for separation pay, he was told that he would not receive separation pay because there was no workforce reduction program in effect for his job. (Incidentally, 3M did a great deal of workforce reduction starting just 8 months after Mr. Tekse's departure, so it would be reasonable to conclude that 3M benefited from his premature departure).

B. Reason for Delay in Action:

Even though Mr. Tekse felt that something was very wrong with the way his career had ended, he did not pursue legal action against 3M because he was inhibited from doing so while he was on PRL. Under the terms of 3M's retirement policy, he would not qualify for the retirement package that caused him to choose the PRL option until he reached the

point in time when his age plus service credit equaled 91, which would only happen after he accrued 59 months of additional service credit as an inactive employee on PRL. If for any reason 3M were to fire him before he completed the necessary 59 months as an inactive employee, he would never accrue enough service credit to qualify for the retirement package that caused him to make the PRL choice in the first place.

Mr. Tekse's concerns about pursuing legal action against 3M while he was on PRL were reinforced by an incident that occurred at the 3M stockholder's meeting in 1999. At that meeting, during the audience comment part of the meeting, two former 3M employees each told that bad things had happened to them after they pursued legal action against 3M. One of the former employees was a woman with 20+ years 3M service, who said that she had been fired after suing 3M because of an injury she had incurred at 3M. The other former employee was a retiree, who said that some of his 3M stock had disappeared after pursuing a lawsuit against 3M's CEO. Mr. Tekse did not know either of these individuals or the details of their situations, but the fact that they were willing to give these accounts before an audience of several thousand stockholders served to reinforce his concerns about pursuing legal action against 3M while he was an inactive employee on PRL.

C. Employee's Constructive Fraud Complaint:

After completing the necessary 59 months on PRL, Mr. Tekse became a retiree and could then pursue legal action without fear of being fired. He then contacted various labor attorneys about his situation, but they showed little interest in pursuing his case. Several of the attorneys expressed concern about the statute of limitations issue. In spite of the lack of interest by labor attorneys, Mr. Tekse was well aware that he had suffered a large loss as a result

of the very difficult choice that he had to make due to the way 3M ended the PRL program. He therefore concluded that existing labor law would not help in his situation, and proceeded to look for a cause of action other than labor law on which he could try to recover his loss. He found that the concept of a constructive fraud fit his situation, and that he was within the 6 year statute of limitation for fraud in Minnesota State Court (Minn. Stat.541.05 Note 214: ...Under Minnesota law, six-year limitations period applicable to fraud actions begins to run when plaintiff knew or should have known of fraud). So, he filed a constructive fraud suite against 3M in Minnesota State Court on November 21, 2003. Mr. Tekse estimated his loss to be $250,000, and asked for that amount.

D. Employer's ERISA Defense

3M used ERISA as its defense against the constructive fraud complaint.

3M removed the case to federal court on December 11, 2003 citing ERISA preemption. After approximately 1 year of litigation involving discovery issues, 3M filed a motion for dismissal or summary judgment of the case on January 14, 2005. The U.S. District Court granted 3M's motion, stating that the statute of limitations under ERISA had elapsed and that federal court does not recognize constructive fraud (see transcript of Judge Montgomery's statement at App 3a).

Mr. Tekse appealed to the U. S. Court of Appeals on April 25, 2005. On January 23, 2006, the Court of Appeals filed a Per Curiam opinion affirming the District Court's decision, stating that the case was time-barred under ERISA (29 U. S. C. 1113) (App 1a). on February 3, 2006, Mr. Tekse petitioned for a rehearing en banc, stating that he felt that the case warranted a departure from strict ERISA

law, and the case should be considered by all eligible judges since various judges may differ on the question of when it is appropriate to depart from strict application of a law. His petition was denied on March 3, 2006 (App 6a).

REASON FOR ALLOWANCE OF WRIT

The U. S. Supreme Court should review this case because the situation that happened to Mr. Tekse could happen to a vast number of other employees who are covered by retirement policies that are similar to 3M's retirement policy; that is, any retirement policy where the value rises sharply in the employee's later years. As the graph on App 7a shows, the situation involved in this case stems from the fact that under 3M's retirement policy, the value of an employee's retirement package rises sharply at a point in the employee's later years. Any change in this type of policy which shifts the rise point in the curve in the direction of increasing age will catch some employees in the position of having just recently reached the rise point and thereby having qualified for a greatly increased retirement package. Unless there is some provision, such as grandfathering, that would allow those employees to retain the increased retirement package after the change goes into affect, those employees will be forced to make the very major and difficult choice that Mr. Tekse had to make of whether or not to end their employment before the change goes into affect.

A clear answer to the equitable duty issue posed by question 1 on the first page of this petition will provide direction for employers who make changes to their retirement policies in the future.

CONCLUSION

The real issue of this case, which is stated in question 1 of this petition, inherently must be answered by a court of equity. The lower courts have answered questions 2 and 3 using strict ERISA law and thereby dismissed the case without ever considering the real issue of the case stated in question 1.

This petition asks that the U. S. Supreme Court function as a court of equity in answering all three questions presented for review.

Respectfully submitted,

Craig T. Tekse

Craig T. Tekse
Pro se
3735 Orchard Avenue No. A
Minneapolis, Minnesota 55422

May 26, 2006

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-1509

Craig T. Tekse,	*
	*
Appellant,	*
	* Appeal from the United
v.	* States District Court for
	* the District of Minnesota.
3M Company,	*
	* (UNPUBLISHED)
Appellee.	*

Submitted: January 6, 2006
Filed: January 23, 2006

Before BYE, McMILLIAN*, and RILEY. Circuit Judges.

PER CURIAM.

Craig T. Tekse appeals the district court's** adverse grant of summary judgment in his civil lawsuit claiming

constructive fraud against his employer, 3M Company (3M). Having conducted de novo review, we agree with the district court that Tekse's state-law claim for constructive fraud—arising from 3M's discontinuation of a preretirement leave (PRL) policy—is preempted by the Employment Retirement Income Security Act (ERISA). See Estes v. Fed. Express Corp., 417 F. 3d 870, 972 (8th Cir. 2005) (standard of review; ERISA preempts state law claims that relate to employee benefit plan such that they have connection with or reference to such plan; claim relates to ERISA plan when cause of action is premised on existence of ERISA plan).

Having determined that Tekse's state-law claim was preempted , the district court properly considered whether Tekse could pursue an ERISA claim for breach of a fiduciary duty, see Slice v. Sons of Norway, 978 F.2d 1045, 1047 (8th Cir. 1992) (per curiam), and we agree with the district court that such a claim was time-barred. Tekse admittedly knew of the alleged breach when he was notified in late 1997 that the PRL policy was being discontinued, yet he waited until November 2003 to file the instant lawsuit. See29 U.S.C. sec. 1113 (time limitations for breach of fiduciary duty); Brown v. Am. Life Holdings Inc., 190 F.3d 856, 858-59 (8th Cir. 1999) (ERISA contains express statute of limitations barring fiduciary –duty claims after earlier of 6 years from breach or 3 years from date plaintiff acquires actual knowledge of breach).

Finally, Tekse's assertion that his case reveals a shortcoming in ERISA is not a basis for reversal.

*The Honorable Theodore McMillian died on January 18, 2006. This opinion is being filed by the remaining judges of the panel pursuant to 8th Cir. Rule 47E.

**The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.

Transcript of Oral Opinion of the Honorable
Ann Montgomery
United States District Court Judge
For the District of Minnesota

I did have an opportunity to examine the briefs that you both filed and I must say, Mr. Tekse, I enjoyed your conversational style in your brief. I know it's hard to be a pro se attorney and write this material, but your candor and your expressions in writing it made it easy reading.

I think it's important as a starting point to understand that the law provides remedies for some wrongs but not all, and there are injustices and tough decisions and things that there is no legal remedy for. It's not a cure-all to make the entire world and the entire marketplace fair. My job as a federal judge is to make sure that as these motions come in front of me, a claim, a case, has a niche, has a spot in the federal law that makes it a cognizable or recognizable cause of action, as we say.

Congress chose to enact a law which we call ERISA that preempts, as we say, takes over the entire field of employee welfare plans, and clearly this PRL and its applications and implications to you is within the realm of ERISA law. So then the question becomes for me has Mr. Tekse stated a claim that's cognizable or recognizable within this world of ERISA law.

You have labeled appropriately your claim constructive fraud and I think I understand in theory what that is. That is a state-law claim, not a federal claim, and one that isn't recognized by the civil enforcement scheme of the ERISA. Mr. Lucke I think approached it in his brief as – he went one step further. Instead of just saying that and ending it there, well is there something if we put another name on it

other than constructive fraud that would make it arguably within ERISA, and there was some talk about perhaps a breach of fiduciary duty claim. It doesn't fit there either, because much of what you say the company said -- and I'm taking your brief as the word because that's what we do at this stage -- is that I don't think there is any representation that 3M ever made that this was going to be a permanent situation, that it was admittedly putting employees on a hot seat to make a tough decision.

Now, it may be as you've indicated that that created a tether or was unfair in some respect, and as you've discussed, perhaps it would have been or could have been handled by a grandfather clause or a phase-out or phase in on a gradual thing, but my job isn't to decide what better way they could done it, what might be more fair. I have to look at this stated a claim under ERISA that is something the federal court ha a remedy for. And you've been very honest about what was said and what wasn't, and the sort of things that you've relied of just aren't a legal representation that I can hold 3M responsible. I mean, when you say that somebody told you that they may or may not continue the program, that's just not the certain sort of thing.

There is a principle in the law called detrimental reliance that creates a claim called promissory estoppel that happens, but it's clear that by the end of 1996 that you were aware of the situation, and in that regard, obviously the statements have to be weighed against the express terms in the PRL, and I think that there just isn't any basis for a promissory estoppel claim.

I've also looked a little bit at the statute of limitations, and, you know, I can understand how you have talked about the fact that you did in fact have actual knowledge six years before the complaint was filed and I can certainly

recognizable legal defense to the statute of limitations, it doesn't toll the statute of limitations, so clearly the statute has expired as well.

I am going to grant 3M's motion for summary judgment.

I do understand that this puts you in a difficult situation and made you make a tough call at the time. I mean, it looks to me that there could have been a worse result for you. Obviously, lots of employees that are with companies that lose their entire pension or whatever have far more severe injury. I understand that this was not the decision that you were seeking and it made a tough call for you at the time, but I do find that there is no cognizable claim for you in the federal court.

So, for those reasons I'm granting the motion for summary judgment for the defendant. I don't intend to follow this with a written order. I've tried to explain my reasons. If you would like a transcript of these remarks, you need to order them from the court reporter. Otherwise, we'll issue a summary grant of summary judgment motion. Thank you.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No 05-1599

Craig T. Tekse,	*	
	*	
Appellant,	*	
	*	Order Denying Petition for
vs.	*	Rehearing and for Rehearing
	*	En Banc
3M Company,	*	

Appellee.

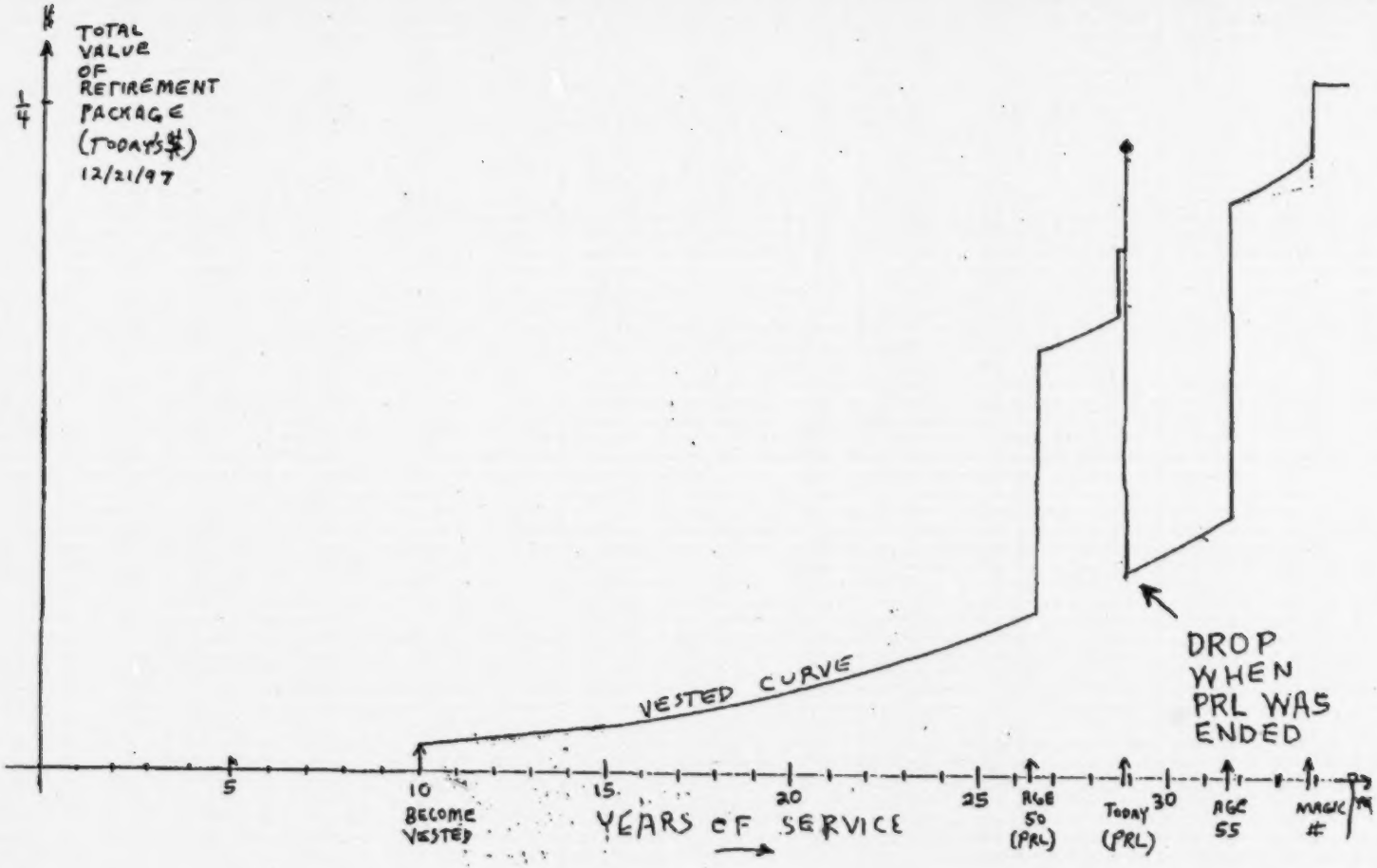
The petition for rehearing en banc is denied. The petition for rehearing by panel is also denied.
(5128-010199)

March 3, 2006

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U. S. Court of appeals, Eighth Circuit


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TOTAL VALUE OF RETIREMENT PACKAGE (TODAY'S $)
12/21/97
1/4
VESTED CURVE
DROP WHEN PRL WAS ENDED
5
10
BECOME VESTED
15
20
25
AGE 50 (PRL)
TODAY (PRL)
30
AGE 55
MAGIC #
YEARS OF SERVICE